The Solicitors' Journal

VOL. LXXVII. **Saturday, June 3, 1933.** No. 22

Current Topics.

Interchange of English and Scots Judges.

LAST week English practitioners were interested to find that in King's Bench Court, No. IX, the Railway and Canal Commission was constituted by Mr. Justice MACKINNON, Lord BLACKBURN of the Scots Bench, and Sir FRANCIS DUNNELL, one of the appointed Commissioners of that tribunal, and some were inquiring how it came about that a member of the Court of Session came to be sitting in an English court. The answer to this will be found in a recent Act of Parliament—Railways (Valuation for Rating) Act, 1930, which, *inter alia*, provides that any appeal against the decision of the Anglo-Scottish Railways Assessment Authority shall be heard by the *ex-officio* Commissioners for England and Scotland, and one of the appointed Commissioners. At the present time Mr. Justice MACKINNON is the *ex-officio* Commissioner for England, and Lord BLACKBURN is the *ex-officio* Commissioner for Scotland, and it was a mere question of general convenience whether the court should sit in London or in Edinburgh. Doubtless the underlying idea for this conjunction of the two *ex-officio* Commissioners in disposing of the kind of appeal mentioned is to ensure that both in England and in Scotland there shall as far as possible be uniformity of view in the rating of the railways which serve both countries. As Mr. TYLDESLEY JONES, K.C., one of the counsel in the appeals, remarked in welcoming Lord BLACKBURN as the first Scots judge to sit in the Royal Courts of Justice, it was gratifying that he should bear the name of and be of kin to Lord BLACKBURN, whose name is writ large in the development and exposition of the English common law of the past generation. This interchange of judges of the supreme courts of the two countries is also a reminder that in the past English barristers have been eligible for appointments in tribunals sitting in Scotland. Till 1838 Scotland had a separate Court of Exchequer to which on several occasions members of the English Bar were appointed. This was then quite feasible, for the Scottish court, unlike that of England, had no general jurisdiction in civil cases, but was limited to fiscal matters—questions of taxes and the like. For example, Sir SAMUEL SHEPHERD, who had been Attorney-General of England, became Chief Baron of the Scottish Court of Exchequer in 1819, and in the following year was included in the commission of oyer and terminer issued for the trial of certain prisoners charged with treason in Scotland. As the Crown lawyers in Scotland had had little experience of trials commenced by bills found by a grand jury or of treason charges, they were assisted on this occasion by Serjeant HULLOCK of the English Bar, afterwards Baron HULLOCK of the Court of Exchequer, whose appearance in a Scottish court was challenged by JEFFREY, the leading counsel for the prisoners, but his objection was overruled on the ground that the court was not a purely Scottish tribunal, but was one sitting under a commission issued under the Great Seal for the United Kingdom, and, therefore, English as well as Scottish counsel had the right of audience.

Spiritualists and the Law.

THOSE who followed the newspaper reports of a recent Scottish case in which a "medium" was prosecuted and convicted will have observed that the question of honest belief was made a vital issue in those proceedings. Bogus mediums are probably as much a source of trouble to serious students and exponents of spiritualism as to anyone else; but while in practice a medium sincerely believing what she professed is not likely to be prosecuted in England, it seems that in theory such practices constitute the practitioner a "rogue and vagabond," under s. 4 of the Vagrancy Act, 1823. This section deals with what is commonly called "fortune-telling." The matter has been raised, indirectly and directly, in three cases. In *R.* v. *Entwistle, ex parte Jones* [1899] 1 Q.B. 846, the applicant for a *certiorari* had been convicted on an information which did not allege an intention "to deceive or impose upon Her Majesty's subjects," and as the court held that the words "pretending or professing" implied an intent to deceive, so that the proceedings were not defective in form, the authority suggests that dishonesty is an essential ingredient. Then in *Davis* v. *Curry* [1918] 1 K.B. 109, a case stated by a magistrate who had convicted a "spiritualistic medium and clairvoyante," in spite of her claim to possess "supranormal qualities," was remitted (AVORY, J., dissenting) with a direction to acquit if sincerity were not disproved. But when *Stonehouse* v. *Mason* [1921] 2 K.B. 818, raised a similar point, a court of five judges, specially summoned, unanimously came to the conclusion intent to deceive or impose was immaterial, and declined to follow *Davis* v. *Curry*. The decision was arrived at after a lengthy examination of authorities and of repealed statutes, commencing with 39 Eliz. c. 4, and DARLING, J. (as he then was), who had been a member of the court which decided *Davis* v. *Curry* (and also of the court which decided *R.* v. *Entwistle*), explained his change of opinion accordingly. What is perhaps regrettable, is an *obiter* by LAWRENCE, L.C.J., who remarked, in the course of his judgment, that while no intent had been found by the magistrate, he (LAWRENCE, L.C.J.), could not imagine anyone holding himself out to tell fortunes for money who did not perfectly well know that he was deceiving. Another defence that suggests itself in the case of a sincere and scientific spiritualist, is a plea that no subtle craft, device or palmistry is used; but the words "by palmistry" are followed by "or otherwise," and the judgments in *R.* v. *Justices of Middlesex* (1877), 2 Q.B.D. 516, and *Monck* v. *Hilton* (1877), 2 Ex. D. 268, show that professed communication with spirits by means of slate-writing, table-rapping, etc., is within the section.

Trial by Jury.

As was to be expected, the campaign for the improvement of the administration of justice has raised once more the old question of trial by jury. It is a question on which lawyers are apt to hold strong opinions, either for or against the institution. The inherent difficulty in deciding the matter on its merits is due, of course, to the fact that the question whether A is or is not a competent judge of fact is itself a question of fact. For this reason we attach no value to those statements of judges (usually county court judges with overburdened lists), so often reported in the daily papers, to the effect that a jury is useless or worse than useless. On the other hand, law reports of recent years contain plenty of evidence that many members of the judiciary consider trial by jury the most satisfactory method available of deciding certain questions, and we observe that Lord ATKIN, who, in *Ford* v. *Blurton* (1922), 38 T.L.R. 801, C.A., eulogised the institution, voiced the opinion that reform with regard to juries had gone further than was necessary when the Administration of Justice (Miscellaneous Provisions) Bill came up for discussion in the House of Lords. In the case mentioned, BANKES, L.J., expressed similar sentiments, and both judgments were quoted in those delivered in *Calcroft* v. *London General Omnibus Co. Ltd.* [1923] 2 K.B. 608, when LUSH and SALTER, JJ., pointed out that a judge, when considering whether an action may as "conveniently" be tried without as with a jury was not entitled to consider his own convenience, and that the onus was on the party who applied for the jury to be dispensed with. In *Russell* v. *Russell* [1924] A.C. 687, we find observations for and against: Lord DUNEDIN remarked that juries were sometimes swayed by irrelevant considerations, Lord CARSON that in many cases of the vilest and most unfounded charges, trial by jury had hitherto proved the only efficacious protection for the subject attempted to be implicated. The question is not, after all, which of the two methods is the right one, but rather which is the less fallible: and we should not lose sight of the fact that human ingenuity may devise other methods. A few years ago, a paper was read at The Law Society's annual meeting in which the writer advocated the appointment of salaried assessors to decide issues of fact. Possibly, owing to the state of the national finances, this suggestion has not received the attention it deserves; at present, it is admittedly outside the realm of practical politics; but it does remind us that judge alone and judge plus jury are not the only alternatives.

Compensation for Volunteers.

THE cumulative misfortunes of an elderly woman who, in saving the life of a child which had strayed in front of a motor-car, was herself seriously injured, appear from a paragraph in *The Times* of 9th May, recording the presentation to her of the Carnegie Trust's certificate for bravery. As the result of her injuries she was in hospital for three months, and, for some time, the doctors despaired of her life. The paragraph in *The Times* states that, because her action in throwing herself in front of the car was premeditated, she was unable to obtain damages at law. The proposition so broadly stated, however, is at least open to doubt. If there was no negligence on the part of a motorist, neither he nor the company behind him would be responsible for the consequences of a child running in front of his car without giving him a chance to pull up. Given that negligence could be proved against a driver in otherwise similar circumstances, however, his plea of contributory negligence against a rescuer on the ground that the latter voluntarily incurred the danger should not necessarily be successful. In *Brandon* v. *Osborne, Garrett & Co.* [1924] 1 K.B. 548, a wife who tried to rescue her husband from injury from a fall of glass due to the negligence of the defendants recovered damages for her own injuries in so doing on the ground that what she did in the attempted rescue of her husband was instinctive and in the circumstances proper. SWIFT, J., in effect, held that her action, taken on the spur of the moment, was almost in the nature of a reflex, and, not having to consider a case where the act of rescue was deliberate, refrained from deciding the larger question: see p. 555. In *Eckener* v. *Long Island Railway* (1871), 3 Am. R., the plaintiff's intestate had been killed by a train after he had run fifty feet to rescue a small child playing on the line. Such a course was one which could hardly be described as a reflex action, but the plaintiff recovered on proof of the defendants' negligence. In the Scottish case *Woods* v. *Caledonian Railway Co.* (1886), 13 R. 1118, the action of the deceased, who again was trying to rescue a companion from an oncoming train, might either have been impulsive or deliberate. The question of contributory negligence was held rightly left to a jury. The conclusion of Sir F. POLLOCK ("Pollock on Torts," 13th ed., p. 498) on the American case may perhaps be quoted: "The law does not think so meanly of mankind as to hold it otherwise than a natural and probable consequence of a helpless person being put in danger that some able-bodied person should expose himself to the same danger to effect a rescue." When injury to such a person arises from pure accident, and no one is to blame, probably the average taxpayer, burdened as he is, would prefer to compensate one injured in saving life rather than let destitution be the reward of courage.

A Juror's Objections to the Law.

AN incident in a recent divorce case, reported in *The Times* of 24th May, presents a legal problem of some difficulty. Counsel for the wife, who was respondent, read an affidavit made by her to the effect that a member of the jury, a woman, had come up to her, gesticulating, and said: "I am wasting my time and losing a week's money listening to the likes of you." The woman juror admitted making such a remark, but said it was not addressed to the respondent. She added that she was a Roman Catholic, and objected strongly to divorce. The judge, observing that she was hardly fitted to remain on the jury, ordered her to withdraw, but to remain in court, and the trial, by consent, continued with the remaining eleven jurors. Speaking generally, a juryman is not required to approve of all the law which a judge may have to expound to him, and, indeed, a man who considered the whole body of our law perfect might be considered a somewhat stupid person. By his oath, however, a juror must be taken to waive his objection to the law he is helping to administer, and bias caused by such objection may be deemed misconduct. In case of misconduct which might give rise to a new trial, it is better for the judge to intervene than to allow further time to be wasted. In *Mansell* v. *R.* (1857), 8 E. & B. 54, the plaintiff in error objected to his trial for murder on, *inter alia*, the ground that the judge had ordered a juryman who stated that he had a conscientious objection to capital punishment to stand aside. In giving the judgment of the court, Lord CAMPBELL, C.J., upheld the authority of a judge to reject a juryman, even if unchallenged, if he were deaf or blind, or his mind was preoccupied, as by the impending death of a near relative, so that he could not properly attend to the evidence, etc. (pp. 80-81). In *R.* v. *Coigly* (1798), 26 State Trials 1191, a juryman, ready to be sworn, who looked at the prisoners and observed "D——d rascals," was held rightly excluded from the panel. Probably any judge would excuse a juryman from serving in a murder trial if he stated that he objected to capital punishment, and the judge believed him, and a Roman Catholic or Anglo-Catholic may not be deemed an ideal juror in divorce. Of course, there have been and are Roman Catholic judges trying divorce cases, and humanitarian judges presiding over murder trials, but they are trusted to administer the law according to their oath of office and not their private opinions. Judges, no doubt, have often done valuable work in criticising the law they administer—provided that their criticism is not too frequent or indiscriminate.

Monuments in Churchyards.

THE judgment of the Chancellor of the Diocese of Exeter, reported in *The Times* of 16th May, and commented upon in THE SOLICITORS' JOURNAL of 27th May, at p. 361, refusing permission to the relatives of a deceased resident to erect a marble monument in a country churchyard, is interesting as being the second judgment of its kind delivered recently, the last being a judgment of the Dean of Arches (Sir Lewis Dibdin) on appeal from a judgment of the Chancellor of the Diocese of St. Albans refusing permission in a similar application, though the circumstances were different (*vide* THE SOLICITORS' JOURNAL, 15th April, p. 268). In the *St. Albans Case* the Dean of Arches allowed the appeal and directed that a faculty should issue for the erection of the monument in question. There seems to be some likelihood of these cases arising more frequently, now that greater interest is being taken by incumbents and diocesan boards in the care and beautifying of country churchyards; and it is well that the public at large should know what are the rights of parishioners in such a matter.

The freehold of a churchyard belongs to the incumbent *qua* tenant-for-life or during tenure of his office, subject to the parishioners' rights of burial, and as such he is responsible with the churchwardens for the care of the churchyard. The parishioners, by custom, have a right to fix plain memorial stones over their deceased relatives, subject to the discretion of the incumbent in regard to what is appropriate. Incidentally, it may be observed that *somebody* must have authority in matters of this kind: what would happen if every owner of a grave were permitted to erect whatever monument he chose to put upon the site may well be imagined! Therefore, the incumbent as freeholder is obviously the appropriate person to decide what shall and what shall not be erected. The right of refusal on the part of the incumbent to allow a particular monument to be erected is, however, limited by the fact that a right of appeal from such refusal lies to the Consistory Court, and from the Consistory Court to the Court of Arches.

It is of particular interest to note that there is yet another possible appeal, namely, to the Judicial Committee of the Privy Council, and reference to some of the ancient cases dealing with this topic will reveal exactly what the position is and upon what grounds the ultimate decision is based. In the case of *Cart* v. *Marsh* (1737), 95 E.R. 302, it was held that an appeal from the Ordinary lies to the Metropolitan in the matter of putting up a monument in a church. The Ordinary means, of course, the Bishop, and the Consistory Court being the Bishop's Court, the decision of its judge (the Chancellor) is in fact the decision of the Bishop. The Metropolitan means the Archbishop; and the Court of Arches being the Court of the Archbishop, the decision of its judge, the Dean of Arches ("Dean of the Arches Court of Canterbury") is in fact the decision of the Archbishop. From the Archbishop appeal lies to the Crown—to wit, the King in Council. That is the true inwardness of the whole procedure; and although nominally neither Bishop nor Archbishop intervene, it is well known that the Bishop will frequently cause his own view to be placed before his Chancellor. Whether Archbishops cause their views to be placed before the Dean of Arches is not generally known. Possibly they do. But there is plenty of authority for the statement that the Bishop (if he be so minded) lets his Chancellor know what he thinks about the matter. In the report of *Keet* v. *Smith*, *infra*, the argument for the appellant makes that clear.

Keet v. *Smith* (1875), 1 P.D. 73, gives the general grounds of decision in tombstone cases. There the incumbent of a Lincolnshire parish refused to allow a tombstone to be placed in the churchyard over the daughter of the Wesleyan minister. The object was that the deceased was described as "daughter of the Revd. Henry Keet, Wesleyan Minister," and the incumbent objected to the title "Revd." On appeal to the Consistory Court the Chancellor of the Diocese of Lincoln upheld the objection (which seems to have been that the title "Reverend" implied that the person to whom it applied was in holy orders). The case then went to the Arches Court, where, apparently, the Dean acted upon a private letter of the Bishop and refused to interfere. The Judicial Committee of the Privy Council, however, applied the correct principle, holding that the clergy of the Church of England possessed no right to the exclusive description of "Reverend" which had even been applied to distinguished laymen; and the Lord Chancellor, who delivered the judgment, concluded with these words: "Their lordships, therefore, dealing with this, which is the only objection made to the erection of this tombstone, are compelled to say, and they say without any hesitation, that in their judgment, it does not afford a sufficient reason for refusing to allow the erection of the tombstone. They are therefore of opinion that a faculty should issue for this purpose." The case was therefore remitted to the Court of Arches for a faculty to be issued; and the net result of the whole matter was that the principle of "sufficient reason" for refusal was definitely established. How that principle is now regularly applied may be gathered from a perusal of the judgments of the Chancellor of Exeter and the Dean of Arches in the two recent cases referred to at the commencement of this article. The only new feature in modern procedure is to be found in the fact that there is now an Advisory Committee in every diocese whose opinion on all erections, whether in churches or in churchyards, is always part of the material considered by the ecclesiastical authorities.

An Illegal Agreement.

WHATEVER in the past may have been the view in the profession, and indeed, whatever it may still be, regarding the propriety of a solicitor making a payment to a third party for introducing work, it was definitely established by the authorities, culminating, perhaps, in *Lake* v. *Bartlett and Gluckstein* (1921), 37 T.L.R., 316, that there is nothing illegal in a bargain between a solicitor and an unqualified person that the solicitor will pay remuneration to the unqualified person in respect of business done by the solicitor for clients introduced by the unqualified person; a like view was also held in *Harper* v. *Eyjolfsson* [1914] 2 K.B. 411. In *Lake's Case* the plaintiff, who had been managing clerk of the defendants, claimed a sum in respect of work introduced by him to the defendants, and he alleged that there had been a verbal agreement that he should receive a certain percentage of the gross profit costs. In evidence he stated that it was not an uncommon thing for solicitors to make bargains of that kind. On behalf of the defendants, however, it was said that they resented the suggestion that they were parties to such an arrangement. Mr. Justice Shearman, before whom the matter came, arrived at the conclusion that there had been a bargain between the defendants and the plaintiff, but that it was not a bargain to share profits, but to pay something—"that it would be made worth his while"—for introducing work, and he (his lordship) was unable to find that that was an illegal agreement. Commenting on this matter in the course of his judgment, his lordship observed that it used to be considered some twenty or thirty years ago that it was an illegal transaction to pay sums of money to an unqualified person for introducing work.

On the above authorities, therefore, such an agreement is not, apparently, necessarily illegal, but a broad line of distinction must be drawn between such a case and one in which the effect of the agreement results in the business of an unqualified person being carried on in the name of the solicitor for the profit of the unqualified person, even though the solicitor shares the profit. Such an agreement is plainly illegal. An instance in this latter connection was recently considered by the Disciplinary Committee of The Law Society. In that case the

committee found that a solicitor had entered into an agreement "for the sharing by a solicitor in the profits of business placed with the solicitor by an unqualified person carrying on the business of legal aid, namely, a business which involves the attraction of clients for the purpose of giving legal aid. The solicitor is to be housed in the office in which the business of the unqualified person is carried on, and books of account of the solicitor's business introduced by the unqualified person are to be kept by the solicitor and the unqualified person." The committee considered that it was highly undesirable and, indeed, mischievous that a solicitor should be in close association with the person carrying on legal aid which a business of that kind involved, and they pointed out that a person carrying on such a business was not bound by the rules and observances which bound and were followed by solicitors, and that an association of that kind must lead to abuses. In entering into such an agreement, the committee concluded, the solicitor had been guilty of professional misconduct.

Costs.

NON-CONTENTIOUS WORK.

SCHEDULE II of the General Order, 1882, makes provision for the remuneration of solicitors in respect of uncompleted conveyancing business which, if completed, would be remunerated according to the scales set out in Sched. I of the Order, and in respect of all other deeds and documents and all other business not being business in any action or transacted in any court or in the chambers of any judge or master. It is now definitely settled that the term "other business" means other business whether conveyancing or not, see *In re Morgan* [1915] 1 Ch. 182 and 59 SOL. J. 289.

The allowances prescribed by the schedule must necessarily leave a large amount of work ordinarily done by a solicitor unprovided for, and in respect of this work a practice has grown up of granting certain allowances which have now become so well established as to have acquired almost the force of statutory allowances.

The schedule provides the following charges for drawing, perusing, etc., deeds, wills and other documents, namely, for drawing 2s. per folio, engrossing 8d. per folio, fair copying 4d. per folio, and perusing 1s. per folio. The term "other documents" is fairly comprehensive, and the charge of 2s. per folio for drawing applies to conditions of sale, see *Rees*; *Rees* v. *Rees* (1888), 58 L.T. 68; particulars of sale, see *Reade*; *Salthouse* v. *Reade* (1889), 33 SOL. J. 219; and even to a case to counsel before litigation, see *In re Morgan* (*supra*).

The charge of 1s. per folio is only intended to cover the perusal of draft documents drawn by one solicitor and sent to another for approval, see *Re Robertson* (1887), 19 Q.B.D. 1. The fee is also intended to cover all ordinary alterations to the draft document, but if the alterations are extensive and really amount to re-drafting portions of the document, then the charge of 2s. per folio for drawing may be made.

Moreover, the proper charge for perusing an abstract of title is 6s. 8d. for every three brief sheets of eight folios each, the old allowance being held to prevail, see *Re Parker* (1885), 29 C.D. 199. The charge for drawing and copying an abstract of title is prescribed by Sched. II as 6s. 8d. and 3s. 4d. respectively for each brief sheet of eight folios.

In passing, it may be observed that although the note giving the taxing master discretion to increase or diminish the "above charge" in extraordinary cases follows immediately after the allowance for attendances, yet it has been held to apply also to the allowances set out above for drawing, perusing, etc., see *Re Mahon* (1893), Q. Ch. 507. It follows then that there may be extraordinary cases where the charge of 2s. per folio may be deemed too much by the taxing master, and, since the court will rarely interfere with his discretion on a question of *quantum* only, his discretion is practically absolute.

The charge for attendances in ordinary cases is 10s., and again the taxing master has discretion to increase or diminish the charge if for any special reasons he thinks fit, and he is not bound to state his reasons unless objections are lodged, see *Re Mahon* (*supra*).

The Schedule prescribes a charge of five guineas a day of seven hours for travelling on business or, where less than seven hours are occupied, then 15s. per hour.

So much then for the allowances provided by the schedule in respect of non-contentious business, and it will be observed that an outstanding omission is an allowance for letters. It has become customary, however, to allow for ordinary letters 3s. 6d., and for special letters 5s.; similar letters to another person being allowed at 2s. and 2s. 6d. respectively. Obviously, however, this charge is totally inadequate for long letters of advice which might, and often do, run to many pages in length. Long letters having the characteristics of a report are usually charged and allowed at the rate of 1s. per folio, but even this is insufficient where the letter is a long and detailed expression of opinion touching some complicated point of law; especially when one bears in mind the fact that the charge for drafting a case to counsel to advise is 2s. per folio for drawing only, see *In re Morgan* (*supra*). Such a charge is not allowed, however, for letters, and in order to obtain adequate remuneration it is often better to include the fee for drawing the letter of opinion in with that for perusing the relevant documents and attending and obtaining instructions, and to charge a round sum. Even so, the position is unsatisfactory, and the remuneration for writing long letters of opinion is usually inadequate when it comes to taxing a bill of costs as between solicitor and client.

The Public Trustee's Report.

THE office of Public Trustee has now celebrated its twenty-fifth birthday, and the report recently published by the Public Trustee of the workings of his department during the past year only goes to show that for a large number of trusts this office has thoroughly justified its creation. Being, as it were, state-guaranteed and equipped with a staff highly qualified in both the accountancy as well as the legal sense, this office is able to, and does, carry out its duties in a manner admirable on the ground of its efficiency and eminently practical on account of the continuity of its existence; and, whilst it continues its present policy of not unduly trespassing upon the ground of those professions most intimately concerned with the administration of trusts, the members of the legal profession, at any rate, cannot fail to give the Public Trustee himself and his officers generally full credit for its success.

The office accepted 1,071 new cases last year of a capital value of over £13,000,000. About 60 per cent. of these new cases were under £5,000 in value. The total number of cases accepted since the office was instituted is 30,188, of which 11,807 have been finally distributed, leaving 18,381 cases now being administered. The capital value of the funds now under the Public Trustee's direction is now approximately £213,000,000, in addition to landed property valued roughly at £50,000,000. The administration of this vast capital has been carried on last year *without any claim for loss*, whether for breach of trust or negligence or mistake. This is a remarkable achievement, reflecting the highest credit to Sir Oswald Simpkin and his staff.

The expenses of the office are met by charges paid partly out of capital and partly out of income. There is a fee payable on the Public Trustee accepting the trust and another payable on the final winding up and distribution. These come out of the capital of the various trusts and amounted last year to over £92,000. There is also a fee for collecting and

distributing the income of the trusts and this fee produced £100,506 last year. Then there are various fees on the sale and purchase of investments and other miscellaneous matters, totalling last year about £104,000 (which included nearly £34,500 commission refunded by stockbrokers and others and not deducted either as capital or income from the trusts administered by the office). It is interesting to note that the total charges imposed by the office only amount to about one-tenth per cent. of the capital value—almost a negligible figure, and that the cost of collection and payment of income is only about twopence in the £. Even with this low charge the Public Trustee finds himself with a surplus of £24,721 on the receipts and expenditure of his department, which is due however (to a large extent) to commission earned on the recent conversion of War Loan.

In view of the very difficult financial position through which this country is now passing and the rapid fluctuations in capital values and income yield, and the fact that the administration of trusts appears (as the Public Trustee points out) to grow increasingly difficult and anxious every year, those concerned in the creation of trusts and the appointment of trustees who have thought fit to engage the services of this admirably conducted department can have little reason to regret their choice.

Company Law and Practice.

CLXXXIV.

SUPERFLUOUS PREFERENCE SHARES.

THE question is not infrequently raised as to whether it is possible to convert existing preference shares, originally issued as non-redeemable, into redeemable preference shares; indeed, there seems to be an impression abroad, which is comparatively common, that such a conversion is possible. But the impression is entirely erroneous: issued non-redeemable preference shares cannot, by any operation whatsoever, be made redeemable. Section 46 of the Companies Act, 1929, is perfectly plain on the point, and there seems to be no room for misconception.

"Subject to the provisions of this section a company limited by shares may, if so authorised by its articles, issue preference shares which are, or at the option of the Company are to be liable, to be redeemed." So runs s. 46 (1), and it is plain that by issue the section means issue, and nothing else. Once shares have left the company's pocket, as it were, they can never be issued again; the act of allotment is the act which constitutes the issue, and when a share has been allotted it can be transferred, but not issued again. Articles of association sometimes provide for forfeited shares being re-issued, *sed quære*, as the text-books say.

The issue of a share is as final and irrevocable as the birth of the young of any known species: once launched on what this year's Stephen lecturer has referred to as "our long fool's errand to the grave," there is no turning back for a share, any more than there is for humanity. But, says someone more knowing than the rest, cannot we do indirectly what the statute does not allow us to do directly? Let us convert these recalcitrant shares into stock, and then let us re-convert this stock into shares, but this time let them be redeemable. This re-conversion, however, is not an issue of shares, and the operation can get us no further; and in this connection it may be remembered that stock cannot be issued in the first place, but it can only arise by a conversion from shares.

No doubt some inconvenience arises from the decision of the legislature only to allow an issue of redeemable preference shares, for, to judge by what one hears, there must be literally hundreds of companies which are burning to convert non-redeemable into redeemable preference shares. Is the omission by accident or by design? I cannot help thinking that the point was overlooked by the draftsman of the Act. It is true that the Greene Committee only recommended that a company taking the necessary power in its articles should be empowered to issue redeemable preference shares, and that the draftsman has therefore merely followed the actual recommendation, but the application of a little more imagination, and a little less slavish adherence to pattern, would have avoided a difficulty. Against this it may be said that it would have been unfair to allow a person who had subscribed for shares on the faith of their being non-redeemable to be, in a sense, expropriated by having his shares made redeemable against his will, and then redeemed. But this is not really sound reasoning, because the preference shareholder has always run the risk of having his rights modified against his wishes; even, in fact, if the rights are attached by the memorandum of association, because a scheme of arrangement under s. 153 may be devised which will affect these. Not only may his rights be modified in this way, but the capital of the company may be reduced by repaying capital in excess of its wants, and he may get his money back, or, in other words, have his shares redeemed in this way. It seems to be a matter calling for the serious attention of the legislature. On balance there could be little doubt of the convenience of allowing a conversion to redeemable preference shares.

In the bad old days there was another method by which a sort of qualified redemption could be achieved: under s. 40 of the Companies (Consolidation) Act, 1908. But this qualified redemption could only be achieved out of undivided profits, and the shareholder had to assume a liability on his shares equivalent to the amount paid off. In practice the section was not extensively used, though it was occasionally convenient for companies possessed of substantial sums by way of undivided profits. The *modus operandi* in such a case was to return a part of the undivided profits under s. 40; the result of which was to create a liability up to the amount paid off, and this liability was then got rid of by a capitalisation of a further sum of undivided profits, utilised in paying up the shares in full. But this was rather a tortuous operation, and had few real advantages; so that the section has been repealed and not re-enacted, and advantage can no longer be taken of its provisions, even in the case of shares issued before the repeal of the section.

Members were to some extent protected under s. 40, because they were individually empowered to require the company to retain the whole of the money actually paid on their shares which would otherwise have been returned to them; this amount retained by the company had then to be invested in trustee securities and the interest on these securities paid to the respective shareholders. The capital sum was held against future calls, and thus the shareholder had, if he took advantage of these provisions, no need to worry about paying up on any future calls.

But in cases where a redemption is not possible, it does not follow that a company cannot in some way divest itself of shares which it finds an incubus, and at this point I may remind my readers that, under s. 46, a company is strictly limited as to the means of redemption at its disposal, for the redemption can only be effected out of profits of the company which would otherwise be available for dividend, or out of the proceeds of a fresh issue made for the purposes of the redemption. The method by which a company may rid itself of such shares is by a reduction of capital under s. 55, though this entails a certain amount of expense, delay and publicity, for the sanction of the court is necessary, and, in certain events, an inquiry as to creditors.

If the company has lost capital, it may cancel the paid-up share capital which is lost or unrepresented by available assets, and it may also pay off share capital which is in excess of the wants of the company. In the former case, however, preference shares cannot be cancelled or reduced (in the absence of a properly effected modification of rights) unless

all shares ranking behind them in respect of capital have been faithfully dealt with in the way of reduction, so that this is not usually of much assistance in getting rid of preference shares. But the exact opposite is the case where capital is being returned—the preference shares come first for a return, as the distribution is made in the same way as it would in a winding up. The court, however, must be satisfied that the capital proposed to be returned is really in excess of the wants of the company. It has been said, and with justice, that the court has power to sanction any sort of a reduction of capital, but in practice the reduction nearly always takes one of the two forms indicated above; it has also been said that it is not necessary to prove the loss, or the excess, to the court (see *Poole* v. *National Bank of China Limited* [1907] A.C. 229); but the practice is to require evidence of these matters, and with reason, for otherwise juggling with the balance sheet might produce undesirable results. On this point the observations of Lord Parker in *Caldwell* v. *Caldwell & Co. (Papermakers) Limited* [1916] W.N. 70, may be looked at: "His own practice had been to insist on *prima facie* evidence of the existence of the state of facts referred to in the resolution. If no such *prima facie* evidence were forthcoming it might well be that the special resolution had been passed under the influence of some mistake or misrepresentation as to the true facts, and it would be unfair to the minority if not also to the majority of the shareholders to confirm a reduction under such circumstances . . . If capital not really lost or unrepresented by available assets were cancelled, it might be possible thereafter, by some adjustment of the figures in the company's balance sheet, to carry the amount so cancelled to profit and loss account, and so indirectly return paid-up capital to shareholders, thus affecting the rights of creditors."

(*To be continued.*)

A Conveyancer's Diary.

Order of Administration of Assets—Lapsed Share of Residue.

ANOTHER case on the order of administration of assets under the A.E.A., 1925, which has been the subject of a number of decisions, was before the Court of Appeal recently in *Re Worthington; Nichols* v. *Hart* [1933] W.N. 131.

The facts appearing from the "Weekly Notes" report were that M.R.W., by her will dated in 1930, after appointing the plaintiff E.B.N. sole executor thereof, and bequeathing a number of pecuniary legacies, devised and bequeathed all the residue of her estate, both real and personal, to E.S. and the defendant L.M.H., in equal shares absolutely.

The testatrix died in 1932 and E.S. predeceased her.

The question was whether in the events which had happened (*a*) the testatrix's debts, funeral, testamentary and administration expenses and (*b*) the pecuniary legacies given by the will and the duties payable thereon were payable primarily out of the moiety of the testatrix's residuary estate bequeathed to E.S., who predeceased her, in exoneration of the moiety thereof bequeathed to the defendant L.M.H., who survived her.

Bennett, J., held that the debts, funeral and testamentary expenses were primarily payable out of the lapsed share in exoneration of the share of L.M.H., but that the pecuniary legacies and duties thereon were payable out of the general estate before the shares of residue were ascertained.

The Court of Appeal reversed that decision so far as the legacies and the duties thereon were concerned and held that such legacies and duties were (alike with the debts and testamentary expenses) payable primarily out of the lapsed share.

This case once again illustrates the extraordinary confusion caused by the provisions of the A.E.A., 1925, regarding the order of administration of the assets of a solvent estate, a confusion which has not been rendered less confounded by the decisions hitherto reported, and I doubt whether even with this latest decision of the Court of Appeal we are yet at the end of the matter. It is, at any rate, rather interesting to note that the Court of Appeal seem to have considered the point at issue to be completely covered by the decision of that court in *Re Tong* [1931] 1 Ch. 202, whereas Bennett, J., evidently did not think so, or he would, of course, have followed it.

However, it is necessary now only to consider the decision of the Court of Appeal.

In order to understand that and the earlier (and by no means consistent) authorities, I must refer to the relevant provisions of the A.E.A., 1925.

By s. 33, sub-s. (1), it is enacted that on the death of a person intestate as to any real or personal estate such estate shall be held (to put it shortly) upon trust for sale, calling in and conversion.

Sub-section (2) enacts as follows:—

"Out of the net money to arise from the sale and conversion of such real and personal estate (after payment of costs) and out of the ready money of the deceased (so far as not disposed of by his will, if any), the personal representative shall pay all such funeral, testamentary and administration expenses, debts and other liabilities as are properly payable thereout having regard to the rules of administration contained in this Part of this Act, and out of the residue of the said money the personal representative shall set aside a fund sufficient to provide for any pecuniary legacies bequeathed by the will (if any) of the deceased."

Sub-section (7) reads:—

"Where the deceased leaves a will, this section has effect subject to the provisions contained in the will."

By s. 34 (3) it is enacted that—

"Where the estate of a deceased person is solvent his real and personal estate shall, subject to rules of court and the provisions hereinafter contained as to charges on property of the deceased, and to the provisions, if any, contained in his will, be applicable towards the discharge of the funeral, testamentary and administration expenses, debts and liabilities payable thereout in the order mentioned in Part II of the First Schedule to this Act."

Now, turning to Part II of the First Schedule, the first item mentioned in the order of administration is—

"Property of the deceased undisposed of by will, subject to the retention thereout of a fund sufficient to meet any pecuniary legacies.",

It seems that Bennett, J., considered that what the testatrix in the case before him had left "undisposed of by will" was one-half of the residue of her estate after payment of the pecuniary legacies which she had directed to be paid, and that consequently the legacies must be deducted before the undisposed-of property could be ascertained.

That was certainly a curious decision, having regard to the previous authorities, but the provisions of the Act are also curious, as I have before pointed out.

The Court of Appeal, in reversing the judgment of Bennett, J., so far as the incidence of the legacies was concerned, relied upon *Re Tong*, *supra*, which was a very interesting case.

A testator by his will, after directing his executors to pay all legacies free of estate duty and to pay out of his estate any duty which might become payable on any gift made before his decease, and after bequeathing certain legacies and annuities and the use and benefit of two freehold cottages, directed them to collect the income from the remainder of his estate and to pay 75 per cent. thereof to his sister during her life, and on her death to invest the income of the whole of the estate for the benefit of the two nieces on their attaining twenty-one years of age. If there should be no such children,

then the whole of the accumulated fund was to be divided between two named charities.

The will having been attested by the sister's husband, Clauson, J., held that the 75 per cent. share of the income of the residuary estate was undisposed of by the will until her death or the birth of a child to either of the nieces.

The question then arose whether the funeral, testamentary and administration expenses, debts and liabilities, other than the estate duty, in the will mentioned, ought to be paid primarily out of such undisposed of income or out of the *corpus* of the testator's residuary estate.

It was held by the Court of Appeal, affirming Clauson, J., (1) that there was nothing in the will to vary the order of application of assets in Pt. II of the First Schedule of the A.E.A., 1925, except in regard to the estate duty referred to, on any gift made by the testator during his life, and (2) that the income of the residuary estate of a deceased person is included in "the real and personal estate" of the deceased made assets for payment of his debts by s. 32 (1) of the A.E.A., 1925, and was "property of the deceased within para. 1 of Pt. II of the First Schedule to the Act, (3) that the share of income of residue of which the gift had failed was "property undisposed of by the will," within para. 1 of Pt. II of the Act, and (4) that the share of the income of residue in question was, therefore, the primary fund for the payment of the funeral, testamentary and administration expenses, debts and liabilities of the testator.

The first point in that case, with which I am not immediately concerned, was whether the income which only arose after the testator's death, was to be regarded as property of the deceased. It was held that it was.

For my present purpose the case is mainly instructive by reason of what was said by Romer, L.J., in the course of his judgment (at p. 212):—

> "Even if the testator had directed his executors to pay all his funeral and testamentary expenses and debts and then given the remainder of his estate on certain trusts, I should still have hesitated to say that this amounted to an indication that the expenses and debts were to be paid in any other order out of assets than that provided for in the First Schedule. The truth of the matter is that there is nothing in this Act which prevents or is intended to prevent executors from paying expenses, debts and liabilities out of the first assets coming to their hands available for the purpose; and Pt. II of the First Schedule really only deals with the ultimate adjustment of the burden as between the parties becoming entitled to the testator's estate. Therefore, the use of such a word as 'remainder' does not seem to me to make any difference."

Lord Hanworth, M.R., quoted that in his judgment in *Re Worthington*, and I have no doubt that the decision in the Court of Appeal was right in that case, but I am not surprised that Bennett, J., went wrong about it.

Nevertheless, this question of the order of administration of assets under Pt. II of the First Schedule to the A.E.A., 1925, remains unsolved, and the effect of the decision of the Court of Appeal in *Re Kempthorne* [1930] 1 Ch. 268, is as difficult to understand as ever.

I venture to take this opportunity of repeating the problem which I put in commenting upon that decision (Vol. 74, p. 150): "A testator specifically devises Blackacre subject to a charge for payments of debts (para. 4). He devises and bequeaths his residuary estate to Y without mentioning debts (para. 2). Here is a clear provision in the will that the debts are primarily to be paid out of Blackacre. But the Court of Appeal says that para. (2) must be exhausted before para. (4) is resorted to, therefore the debts must come out of the residue and not out of Blackacre." I have not yet learned any answer to that.

Mr. Thomas Holt, solicitor, of Winchester, left £9,000, with net personalty £8,924.

Landlord and Tenant Notebook.

Cestui que trust as Agent.

Once, in the history of the law relating to landlord and tenant, a *cestui que trust* was held to have acted as agent for the trustee; and on several occasions since, the courts have had to point out that the relation of principal and agent was not a result of the relation of trustee and *cestui que trust*, but was brought about by the other circumstances of that case, *Jones* v. *Phipps* (1868), L.R. 3 Q.B. 567. These were as follows: trustees of a marriage settlement bought a reversion. The husband supplied part of the purchase-money, but was not referred to in the conveyance. The property was a farm, near the husband's residence; the trustees lived in different and distant parts of the country. From time to time the husband and the tenant negotiated as to the tenancy; the husband's solicitor demanded rent; when negotiations were broken off, the husband gave a notice to quit in his own name, describing the farm as the "premises you hold of me as tenant." He did not even keep the trustees informed of the course of events. When the notice expired and the tenant refused to quit, proceedings were taken by trustees and *cestui que trust* and the tenant disputed the validity of the notice. It was held that there were two questions for decision, one of fact and one of law, i.e., whether the *cestui que trust* had in fact the authority of the trustees, and, if so, whether a notice given by him in his own name was good. Both were answered in the affirmative, the latter on the ground that the husband was a general agent, not an agent with special or limited authority.

But the authority of the *cestui que trust* in the above case was conferred by the conduct of the parties, and the suggestion that a fiduciary relationship in itself makes the parties principal and agent has been rejected in two cases in which an option to determine has been "exercised" by persons not possessed of the legal term. These were *Seaward* v. *Drew* (1898), 67 L.J. Q.B. 322, and *Stait* v. *Fenner* [1912] 2 Ch. 504. In both cases the question was raised by means of a claim by the landlord for rent or for a declaration after the expiry of the alleged notice to determine. In the former the original tenant had assigned the term by deed to F (who was co-defendant in the action); F had assigned by deed to Y; Y had deposited the lease with H. & Co. to secure a loan, and disappeared; after which the plaintiff had demanded and received rent from the original tenant, who was duly indemnified by his co-defendant, the first assignee. The latter then took an "assignment" from H. & Co., and both defendants purported to exercise an option to break the lease at fourteen years. It was held that the option to be validly exercised must be exercised by the assignee of the term for the time being; that Y's abandonment of the premises did not confer agency upon F; and the result was one of those in which the plaintiff secures victory while the defendants are awarded judicial sympathy.

The same can be said of *Stait* v. *Fenner*, in which the defendant had assigned the term to C, who had assigned to Mrs. I., who had found herself unable to pay the rent and decamped. The defendant, having been compelled to pay the rent, succeeded in tracing Mrs. I. and getting her to give him the lease itself and an undertaking to assign to him. She thus became a trustee of the term for him. He never called upon her to convey, however, but proceeded to "assign" to M (with the plaintiff's consent, as required by the lease) from whom the plaintiff subsequently accepted rent. It was M who then gave notice to determine in accordance with the proviso in the lease; this the plaintiff's solicitors acknowledged, but the next step was an action for a declaration that F was still tenant. And it was held that the trusteeship of Mrs. I. did not make the defendant her agent, and that even the acceptance of rent from M did not estop the plaintiffs; only the person who had the legal estate could exercise the option.

A special article in our issue of 20th May last (77 Sol. J. 347), reviewed the recent decision in *Schalet* v. *Nadler, Ltd.*, 49 T.L.R. 375, in which damages for illegal distress were recovered from a company for whom the true lessor held in trust. But the defence raised did not include a plea of agency, and, indeed, it is difficult to see, having regard to the stringent requirements of the Law of Distress Amendment Act, 1888, s. 7, how such an argument could have been maintained. For, while a limited company can distrain only by employing a certificated bailiff (*Hogarth* v. *Jennings* [1892] 1 Q.B. 907, C.A.), it seems unlikely that it could in law or would in fact be authorised to authorise a bailiff on someone else's behalf.

Our County Court Letter.

THE CONTRACTS OF DOMESTIC SERVANTS.

In the recent case of *Severne* v. *Jackson*, at Oxford County Court, the claim was for damages for breach of contract as a domestic servant, viz., for leaving without notice on the 3rd February. The defendant's case was that (1) she had had a nervous breakdown, but (on meeting the plaintiff in Banbury on the 7th March) she had produced a doctor's certificate that she was fit for work; (2) the plaintiff thereupon gave her one day to return to work, but (by reason of the way he spoke to her) she did not do so. His Honour Judge Randolph, K.C., observed that, although the plaintiff had been unnecessarily angry, he was technically in the right. The defendant, being ill on the 3rd February, had left with the knowledge of her mistress—as she was entitled to do. Not having given notice, however, the defendant should have returned to work on the 7th March. Judgment was therefore given for the plaintiff for £2 10s., but (as the defendant had only been paid up to the end of January) she was entitled to a set-off in respect of her wages for February, viz., £2 10s. No costs were allowed to either side. Compare previous cases, noted under the above title, in the "Practice Note" in our issue of the 18th January, 1930 (74 Sol. J. 38). See also the leading article "Dismissal of Domestic Servants" in our issue of the 6th February, 1932 (76 Sol. J. 87) and the County Court Letter in our issue of the 12th March, 1932 (76 Sol. J. 181).

DIRECTORS' QUALIFICATION SHARES.

In the recent remitted action of *Hawkins* v. *Duncan*, at Worcester County Court, the claim was for £2,800 as damages for breach of agreement, viz., that the plaintiff should be permanent joint manager of C. Hawkins and Co. Limited, at a salary of £500 a year and bonus. The plaintiff's case was that (1) having carried on business as a bakery engineer, he signed a preliminary agreement (on the 12th March, 1932) for the formation of a company; (2) the purchase price of the business was agreed at £1,000, and the plaintiff and defendant were to be joint life directors; (3) the balance sheet was to be approved, and the qualifying shares taken up, by the 29th June; (4) the incorporation took place on the 29th April, and on the 9th May a meeting was held at which the plaintiff and his son were each allotted one share, but 500 shares were allotted to the defendant; (5) the latter explained that the plaintiff was not entitled to his qualifying shares (as a director) until after approval of the balance sheet; (6) no balance sheet was submitted until after the 29th June, when the period for the plaintiff to take up his qualifying shares had expired. It was contended that the preparation of the balance sheet had been intentionally delayed by the defendant, whose case, however, was that (*a*) the delay was caused by the plaintiff's absence from Worcester—for sixty-one days out of ninety; (*b*) being thus left as sole director, he was entitled to fill the vacancies on the board by appointing his wife and sister, as the latter had put £600 into the company. His Honour Judge Roope Reeve, K.C., gave judgment for the defendant, with costs.

In the further action of *C. Hawkins & Co. Ltd.* v. *Hawkins*, the company claimed damages for detention of books, and the defendant counter-claimed £18 5s. 9d. in respect of income tax paid by him. The counter-claim was settled by the allotment of shares, and the evidence was that, after the issue of the writ (on the 12th November, 1932) certain books had been returned. The defendant denied having kept any others, and judgment was given for the company for £5, as there had been unjustifiable detention for seventeen days. It was pointed out (for the defendant) that £5 had been paid into court on the 12th December, 1932, and the defendant was therefore awarded costs as from that date.

The advocates of an extended jurisdiction for the county court will doubtless point to the above cases as a concrete argument in support of their proposals.

THE RIGHTS AND LIABILITIES OF DOG OWNERS.

(*Continued from* 77 Sol. J. 332.)

In *Wright* v. *Holland*, recently heard at Chesterfield County Court, the claim was for £20 5s., as the value of pedigree fowls, which had been killed by the defendant's dog. The latter had killed several birds in a pen, and (having been afterwards seen in a field worrying another bird) it had been shot by the plaintiff. The plaintiff had paid five guineas a bird for trap-nested stock cockerels, which had met with success in egg-laying trials, and were becoming profitable when attacked by the dog. The defendant's case was that (1) there was no trace of blood or feathers in the jaws of his dog, after it had been shot; (2) it was three years old, and had never attacked fowls; (3) the plaintiff admitted having shot the dog in mistake for another. His Honour Judge Longson gave judgment for the plaintiff, with costs. Compare the leading case of *Vere* v. *Lord Cawdor* (1809), 11 East 568, and the note on "Dogs Worrying Sheep" in the "County Court Letter" in our issue of the 13th August, 1932 (76 Sol. J. 573).

Obituary.

Mr. F. W. BOORMAN.

Mr. Frederick William Boorman, retired solicitor, of Gravesend, died at his home on Thursday, 18th May, at the age of seventy-two. He was admitted a solicitor in 1882, and when he retired recently he was the senior solicitor in Gravesend. Mr. Boorman was a keen sportsman, and had been President of the Gravesend Cricket Club and Captain of the Mid-Kent Golf Club. He was also a member of the Committee of Management of the Gravesend and North Kent Hospital.

Mr. H. H. FREEMAN.

Mr. Henry Halpern Freeman, solicitor, of Newcastle-upon-Tyne, died on Saturday, 20th May, at the age of twenty-eight. Mr. Freeman had been in practice in Newcastle since January, 1928, when he was admitted a solicitor.

Mr. H. NYE.

Mr. Harry Nye, retired solicitor, of Brighton, died at his home at Worthing, on Friday, 26th May, at the age of seventy-eight. He practised at Brighton from 1878 until his retirement about ten years ago, and the practice is still carried on by his son under the style of Messrs. Nye & Clewer.

Mr. J. T. PARKER.

Mr. John Thomas Parker, retired solicitor, of Wellingborough, died on Friday, 26th May, at the age of eighty-five. Mr. Parker, who was admitted a solicitor in 1869, was senior partner in the firm of Messrs. J. T. Parker & Son, of Wellingborough. He also held the offices of Coroner for East Northants and Clerk to the Wellingborough Urban District Council.

Reviews.

The Law of Town and Country Planning. By S. PASCOE HAYWARD, B.A., of the Middle Temple, Barrister-at-Law, and C. KENT WRIGHT, B.A., Solicitor, Town Clerk of Stoke Newington. 1933. Demy 8vo. pp. viii and (with Index) 420. London: The Estates Gazette, Ltd.; Sweet and Maxwell, Ltd. 17s. 6d. net.

This is an attractively bound volume of handy size containing in pt. 1, a summary of the Town and Country Planning Act, 1932, and in pt. 2, the Town and Country Planning Act, 1932, annotated. The book completely justifies its description as an "exhaustive commentary on the Town and Country Planning Act, 1932," for the annotations are not merely full, they are elaborate. It is obvious that the authors have studied the new Act word by word, looking for difficulties and finding them. But it must be said that every difficulty encountered, whether substantial or otherwise, has been tackled with a degree of thoroughness deserving the highest praise. We do not, however, anticipate that many of the legal points raised by the authors will find their way into the High Court for authoritative determination, for in these days property owners do not lightly embark on litigation against the joint forces of the Ministry of Health and a local authority.

Chapter II of the Introduction denounces "the muddle and general inefficiency" in past development. Speculative builders are accused of erecting houses of the cheapest character among the best residential property to the detriment of the latter and of the ratepayers as a whole. The authors further state that "the waste of money and effort involved in unplanned development is enormous. It is estimated that in the course of fifty years £50,000,000 has been expended by local authorities in this country on the work of a street widening alone. It is further estimated that a similar sum of £50,000,000, which has been spent in demolition and the clearing away of congested areas, would have been saved *in London alone* if a plan for the development and preservation and reconstruction of London, such as that outlined by the London Society in 1912, had been adopted fifty years earlier." In reply to such statements, it may be said, that past development met the needs of the time and that those responsible frequently displayed considerable foresight. Eastbourne, for example, may not be ideally planned, having regard to the enormous amount of motor traffic which that popular resort now attracts, but it is nevertheless a remarkably well-planned town, and whoever was responsible showed as much foresight as could reasonably be expected. Our London squares afford another example of excellent planning, so excellent in fact that they enjoy a preservation Act all to themselves. Old world villages, a special feature of rural England, were not planned, they just grew; large residences, small residences, shops and church, all mixed up together, and all so very contrary to present day notions of orderly development. It might be asked whether the mixing up of cheaper houses among the best residential property, except in villages, has really been so prevalent as the authors would have us believe. Let readers pause, and think of towns with which they are familiar. As regards expenditure on road widening, will not the authors themselves concede that it is scarcely fair to blame past generations for not foreseeing the enormous development of road traffic in recent years? Might not the vast expenditure now being incurred yet prove to be a waste of money if aerial traffic happens to develop in the next few years at the same rate as motor traffic has developed since the close of the great war?

Robert Smith Surtees. By FREDERICK WATSON. 1933. Demy 8vo. pp. 117 (with Index) 292. London: George G. Harrap & Co., Ltd. 12s. 6d. net.

We must be thankful that the task of re-introducing the author of Jorrocks to our city-pent generation has fallen to no mere literary critic or dissector of lady novelists. The author, who knows the hunting field as a Master, can take his seat in the very saddle of Surtees. He has recreated not a personality only, but an epoch which has been almost obliterated from memory when it has not been actually distorted by misconception. Here live again "those fussy, autocratic, kindly men," great landowners or small squires, who "not only lived on their estates, but for their estates," who bound the England of that day solidly together and who "possessed even at the worst a traditional sense of public duty," a type very different from the industrial magnates already beginning to intrude among them. In this community, "hunting was not simply an amusement—it was a social habit" which "played a greater part in English life than any social institution before the age of Queen Anne or after that of Queen Victoria."

In a sense, this book is a Surtees anthology of the pleasantest description, for the whole text is skilfully interwoven with passages from his works. A lawyer will first turn to the chapter which describes those legal experiences wherein Surtees took so little delight, but which undoubtedly strengthened that economy of comment, that sense of proportion, that fund of humour which so strongly marked his style. Here is the portrait of the eminent Mr. Twister, of Lincoln's Inn Square, "one of those legal nuisances called conveyancers." There follows the denunciation of that "redundancy of paper" under pressure of which a litigant wrestles for his rights. Next comes a caricature of the Aldermen in the Guildhall Court, and finally, we have the great speech of Serjeant Bumptious from "Handley Cross," placed beside a specimen of the eloquence of Serjeant Buzfuz—both drawn, of course, from the same original.

Such a book as this is fairly certain to put Surtees into the hands of a good many readers who have hitherto been content to know him only through Jorrocks, and that from afar, and often at second hand, as a sort of literary antiquity as remote as Piers Plowman. Now Surtees and the author will ride together and neither, we are sure, would ask for better company.

Books Received.

Courts and Judges in France, Germany and England. By R. C. K. ENSOR. 1933. Crown 8vo. pp. vii and (with Index) 144. London: Oxford University Press. 6s. net.

Municipal and Local Government Law (England). Third Edition. 1933. By HERBERT EMERSON SMITH, LL.B. (Lond.), Solicitor of the Supreme Court. Demy 8vo. pp. xiv and (with Index) 280. London: Sir Isaac Pitman and Sons, Ltd. 10s. 6d. net.

Notable British Trials: Jack Sheppard. By HORACE BLEACKLEY, M.A., F.S.A., and S. M. ELLIS. 1933. Demy 8vo. pp. xiv and (with Index) 260. Edinburgh and London: William Hodge & Company, Ltd. 10s. 6d. net.

The Constitution of Northern Ireland. Part II. By Sir ARTHUR S. QUEKETT, LL.D., one of His Majesty's Counsel in Northern Ireland. 1933. Demy 8vo. pp. xliii and (with Index) 660. Belfast: H.M. Stationery Office. 31s. 6d. net.

Constitutional Law. By E. C. S. WADE, M.A., LL.M., of the Inner Temple, Barrister-at-Law, and G. GODFREY PHILLIPS, M.A., LL.B., of Gray's Inn, Barrister-at-Law. First Edition, Revised. 1933. Medium 8vo. pp. xxiii and (with Index) 476. London: Longmans, Green & Co., Ltd. 21s. net.

Staples on Back Duty. Second Edition. 1933. By RONALD STAPLES, Editor of "Taxation." Demy 8vo. pp. (with Index) 128. London: Gee & Co. (Publishers), Ltd. 10s. 6d. net.

POINTS IN PRACTICE.

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Rent, where Payable.

Q. 2740. By agreement under hand it was mutually agreed (*inter alia*) between A and B as follows: "B shall be entitled to occupy a furnished cottage and land at the rent of £1 1s. per week payable weekly, he paying in addition all rates taxes and insurance for which A is liable in connection with the premises . . . Provided that if the said weekly rent shall be unpaid for seven days after becoming due (whether demanded or not) . . . A shall be at liberty to re-enter upon the said premises and thereupon the tenancy shall determine." B insists that as there is no covenant to pay rent, A must weekly journey to the country to demand the rent. Is this case governed by the decision in *Haldane* v. *Johnson* (1853), 8 Exch. 689?

A. We do not see anything in the agreement to displace the ordinary rule laid down in *Rowe* v. *Young* (1820), 2 B. & B. 234 (to which *Haldane* v. *Johnson* is really an exception) that the rent is payable on the land, unless it were possible to prove a custom that rents of furnished houses stand on a different footing to those of unfurnished houses. However, as the proviso for re-entry is framed to allow a forfeiture whether the rent is demanded or not, A can probably indirectly make B enter into an agreement to pay the rent, by taking or threatening to take proceedings for forfeiture. Of course if B is anxious to get rid of his tenancy, this method would not avail.

Landlord and Tenant—Option to Purchase—Claim for Compensation or Lease.

Q. 2741. A leased to B a shop, with living accommodation over, for the term of seven years which expires in July, 1934. The lease contains an option to purchase at a price which is far in excess of the value of the premises to-day, and B will not care to exercise it. Instead of exercising this option, can he give a notice requiring a new lease, and if not, can he claim compensation for goodwill under the Landlord and Tenant Act, 1927?

A. The option to purchase under the circumstances is no ground for the refusal of a new lease if circumstances warrant it. The landlord to escape liability by an offer to sell must bring himself within s. 5 (7) and offer to sell at a price to be fixed, in the absence of agreement, by the tribunal. It should be noted that the question whether a claim for a lease, or in the alternative for compensation, is a compliance with the Act, has not yet been determined. In *Simpson* v. *Charrington* (*The Times*, 21st March, 1933), a Divisional Court purposely left the point undecided.

Rent Restrictions Act—Sub-tenant Holding Rent Free.

Q. 2742. A, the owner of a small cottage, let the property prior to the Rent Restrictions Act to the chief constable of the county for the occupation of a local policeman, who, of course, occupies the cottage rent free. The chief constable pays the rent to the owner. It has been contended that the police officer is but a tenant at will, and by virtue of *Ecclesiastical Commissioners* v. *Hilder*, 36 T.L.R. 771, the Rent Restrictions Act will not have any application to the property. Having regard, however, to *Gidden* v. *Mills* [1925] 2 K.B. 713, and particularly *Sisk* v. *Cronin* (1930), Ir.R. 98 Sup. Ct., it would appear that the property was controlled within the meaning of the Acts. Can you please state whether in such a case the property is or is not controlled?

A. The opinion is given that the property is not controlled *qua* the chief constable. *Skinner* v. *Geary* [1931] 2 K.B. 546 is an authority that the Acts only apply to protect an occupying tenant, or, at any rate, one who, having given up possession, has the intention of returning. If the police constable occupies rent free he *may* have only a service occupation to which the Acts do not apply. If not he is probably a tenant at will. If *Sisk* v. *Cronin* is good law in this country, it can hardly affect the present case, since the police constable paying no rent is not protected (s. 12 (7)). In *Sisk* v. *Cronin* the sub-tenant actually paid the full rent to the landlord.

S.L.A., 1925, s. 30 (3)—Position of Non-Proving Executor.

Q. 2743. A, who died in 1932, devised real estate on trust for B for life with remainder to C and D, and appointed B, C and D executors. B and C proved the will, power being reserved to D to prove. No trustees for the purposes of the Settled Land Acts were appointed. It is now desired to vest the settled land in the tenant for life. The assent should state who are the trustees of the Settled Land Acts. Are these the proving executors alone, or is D also one? Personal representative is defined in s. 117 (xviii) of the S.L.A., 1925, as including executor original or by representation, etc., and s. 2 (2) of the A. of E.A., 1925, deals with the question of a non-proving executor as regards a conveyance of real estate under that part of the Act, but this does not appear to cover the difficulty.

A. We do not know of any direct authority upon the point, but we express the opinion that only the proving executors can function as S.L.A. trustees. See A. of E.A., 1925, s. 8.

Instrument — Construction — Trust for Sale by Implication.

Q. 2744. A in 1927 purchased some land and afterwards built a house and shop upon it; in fact he was in partnership with B, and the business was carried on on the premises. The profits were shared equally. In 1928 A executed a declaration of trust reciting that the purchase price of the land and house was in fact provided equally by himself and B, and that the land was conveyed to himself as trustee as to one moiety for himself and as to the other moiety for B. By the same document he executed a declaration of trust as to the proceeds of sale of the property and the rents and profits until sale as to one moiety for himself and the other moiety for B, and agreed to appoint B trustee of the legal estate jointly with himself. A has contracted to sell the premises to C. How can title best be made to the land? Does A hold the land in trust for sale and must he appoint a new trustee to receive the proceeds of sale? I act for the vendor and purchaser.

A. We express the opinion that there must be a trust for sale by implication. We suggest that A should appoint B an additional trustee to act with him (A), and that A and B should in the appointment declare that they will stand possessed of the land upon the trusts and with and subject to the powers and provisions affecting the same by virtue of the declaration of trust or otherwise, and in so far as still subsisting, and further that in so far as (if in any degree) the land

is not already subject to an immediate binding trust for sale, the same shall forthwith become subject to such a trust in addition and without prejudice to the trusts already affecting the same. A and B as being solely entitled in equity can vary the trusts. If this is done, title can be made by way of a trust for sale without difficulty. The declaration of trust will, of course, have to be put upon the title. As there is a trust for sale two trustees are necessary to receive the purchase money.

Charge of Annuity by Will—Settlement—General Position.

Q. 2745. A made his will in 1926 whereby he appointed B and C his executors and trustees for all purposes statutory or otherwise, and gave to his trustees all his real and personal estate upon trust to pay thereout an annuity of £450 to his wife D, during her widowhood, and certain legacies (which have all been paid), and subject thereto upon trust for the said B for his own use and benefit absolutely. A died in 1926, and his will was proved in 1927 by B and C. B has recently died, having left a will under which he gave all his property to his wife, and appointed her sole executrix. The will has not yet been proved. D, the annuitant, is still alive and a widow, and is in receipt of the annuity. Presumably the terms of A's will constitute a settlement of his real estate under the Settled Land Act, 1925, by reason of the gift of the annuity. No vesting deed was, however, ever executed in B's favour. Owing to B's death, C is the only surviving trustee of the settlement of A's real estate under his will. What steps must now be taken, and what documents are necessary, to vest A's real estate in B's wife, subject to the annuity?

A. We agree that the will constituted a "settlement" by reason of the charge of the annuity (S.L.A., 1925, s. 1 (1) (v)). The annuitant D is not the tenant for life (*Re Bird: Watson* v. *Nunes*, 70 Sol. J. 1139; [1927] 1 Ch. 210), but B was, and his widow now is, the person having the powers of a tenant for life (S.L.A., 1925, s. 20 (1) (ix)). B's widow is accordingly entitled to have a vesting assent in her favour, which can be given by C as the surviving personal representative of A. C is also the sole trustee for the purposes of the Settled Land Act, 1925. So long as the annuitant survives the land *must* be dealt with as settled land so that the powers of B's widow over it will be restricted to those of a life tenant. The annuity is however a "rent" within ss. 191 and 205 (1) (xxiii) of L.P.A., 1925, and thus B's widow can redeem it under s. 191 of that Act, and then require a deed of discharge from the trustees under s. 17 of S.L.A., 1925, and a conveyance under s. 7 (5) of that Act. From the above it appears that the action which it is desired now to take is not feasible.

Contracting Out of Workmen's Compensation Act.

Q. 2746. A sustained an injury arising out of and in the course of his employment, and for about ten weeks received compensation on the basis of total incapacity. At the end of this time he was re-employed by his employer, although partially incapacitated, and was paid his pre-accident earnings. His employer dismissed A for bad work in about ten days, but there is ample evidence to show that the bad work was occasioned because of the continuing incapacity of A. A is permanently partially incapacitated, but signed a final discharge of his rights to compensation upon being re-employed by his employer, although no lump sum was paid, and no agreement of any kind registered. Are we correct in assuming that A is still entitled to claim compensation from his employer, in spite of his having nominally signed a discharge?

A. The questioners are correct in the assumption that A is still entitled to claim compensation, as the signing of the purported discharge is void as a contracting out—by reason of the Workmen's Compensation Act, 1925, s. 1 (3). See *Russell* v. *Rudd* [1923] A.C. 309. Even an agreement to accept a lump sum is not binding, unless recorded, and (*a fortiori*) an agreement which does not even provide for a lump sum is invalid.

In Lighter Vein.

The Week's Anniversary.

If William Scott, of Newcastle-on-Tyne, coal factor (or, to use the local term, coal fitter), had felt that he had done his whole duty to posterity in being responsible for the birth of ten children, there would have been no Lord Chancellor Eldon in our legal annals. As it was, his family was increased on the 4th June, 1751, by the addition of twins, who were christened respectively Elizabeth and John. The little girl died before the month was out; the little boy lived to be an eminent patriarch of over eighty. Their birthplace was their father's house at the lower end of Love Lane, a narrow passage between two streets, locally called a "chare," and in after years, the Chancellor used to say that he ought not to complain of a small and inconvenient court as he was born in a "chare foot." As a very small child he distinguished himself by falling downstairs, go-cart and all, and landing uninjured on his feet. Later on, he used to regard it as an honourable exploit to rob orchards, but there were raiding expeditions with a tenderer object. It was his chief delight at dancing classes to help the pretty little girls on with their shoes. Tokens of affection were essential and "we used early on Sunday mornings to steal flowers from the gardens in the neighbourhood and then we presented them to our sweethearts. Oh! those were happy days—we were always in love."

Duelling Revived.

Though Germany has just legalised duelling, there seems to be little danger of a similar retrogression in England. As a social institution, it gave its last sign of life when Lord Cardigan was tried by his peers in 1841 for shooting Captain Harvey Garnett Phipps Tuckett in a duel near the windmill on Wimbledon Common. The case turned on the sublimest of technicalities, for though the miller proved that he had seen the shots exchanged and Captain Harvey Tuckett wounded, no proof was available in regard to the other two Christian names set out in the indictment. Lord Denman, acting as Lord High Steward, learnedly explained to his brother peers how much was in a name in point of law, and the accused was unanimously acquitted.

Confined to Court.

It is to be hoped that the woman juror who was recently ordered from the box by Bateson, J., for insulting remarks made during an adjournment to the respondent in a divorce case found time to repent of her indiscretion during the period that she was forbidden to leave the court. There was once a juryman on whom a similar penalty made a heavy impression. He and his fellows had been ordered to remain in court as a punishment for a verdict which Lord Chief Justice Coleridge considered perverse. Late that night a haggard and exhausted figure approached the caretaker and asked whether he might go out and get some food. He had not understood that the confinement was meant to close with the day's sittings.

The Useless Mirror.

When a witness told Charles, J., that she did not often look in the glass, he remarked that she was an exceptional woman. The thing would be unusual even for a man, but it was true of Lord Mansfield who, when Sir Joshua Reynolds asked whether he considered that the portrait he was painting of him was a good likeness, replied: "I really cannot say, Sir Joshua, for I have not seen my face in a looking-glass for thirty years. My servant always dresses me and puts on my wig, and I have no need of consulting a mirror." To Peter Burrows, an Irish silk of former times, the looking-glass meant so little that when his shaving-mirror was broken and removed he still went to the same corner of his room to wield his razor, quite unaware that he could no longer see his face.

Notes of Cases.

House of Lords.

Hvalfangerselskabet Polaris Akieselshap *v.* **Unilever Ltd.**
Hvalfangerselskabet Globus Akieselshap *v.* **Unilever Ltd.**

18th May.

CONTRACT—SALE OF GOODS—WHALE OIL—FACTORY SHIPS—OIL TANKERS—BREACH OF CONTRACT—DAMAGES.

In these two appeals the plaintiffs, two Norwegian whaling companies, claimed from the defendants damages for breach of contract with respect to the sale by the plaintiff companies to the defendants of their entire production of whale oil for the season 1930-31. The claim by the two companies made a total of £447,160. Both the companies owned factory ships on which catches of whale were dealt with and the oil stored in tanks. The plaintiffs contended that the common intention of the parties was for the plaintiffs to sell the whole of their entire production for the season irrespective of whether it exceeded the tank capacity of the factory ships or not, and they claimed alternatively that the contracts should be rectified so as to embody what they alleged to be the real agreement. The defendants contended that under the contract they were only liable to take oil produced, stored, carried and delivered by the plaintiffs' factory ships, and that the plaintiffs having transferred oil from the factory ships to oil tankers for carriage to Europe, they (the defendants) were entitled to repudiate the contract. Branson, J., held that the contracts referred only to oil which the factory ships might produce and bring to Europe, and that the plaintiffs' claim for rectification failed. The Court of Appeal upheld the decision of Branson, J. The plaintiffs now appealed to the House.

Lord ATKIN, in giving judgment, said that under the contracts the buyers had bought the whole of the oil produced by the factory ships, and that the sellers were entitled to deliver that oil not only from the factory ships themselves, but also from other vessels to which the oil had been transferred. For the reasons given he accepted the construction of the contract put forward by the sellers. It was therefore unnecessary to deal with their claim for rectification, as to which all he need say was that if they had failed on construction they had a strong case for rectification. In the result the appeal should be allowed, damages should be assessed if the parties failed to agree, and plaintiffs should have their costs there and below.

Lords WARRINGTON, RUSSELL, MACMILLAN and WRIGHT also allowed the appeal.

COUNSEL: *Wilfrid Greene*, K.C., *N. I. Macaskie*, K.C., and *Valentine Holmes*; *W. N. Raeburn*, K.C., *A. T. Miller*, K.C., and *Cyril Miller*.

SOLICITORS: *Bell, Brodrick & Gray*; *Pritchard, Englefield and Co.*, for *Simpson, North, Harley & Co.*, Liverpool.

[Reported by S. E. WILLIAMS, Esq., Barrister-at-Law.]

High Court—Chancery Division.

In re **Talbot: Jubb** *v.* **Sheard.**

Maugham, J. 24th May.

WILL — CHARITABLE GIFT — MINISTERS OF CHAPEL — AUGMENTATION OF SALARIES—UNITED METHODISTS—FUSION OF METHODIST CHURCHES—METHODIST CHURCH UNION ACT, 1929 (19 & 20 Geo. 5, c. 59), s. 18.

The testator died on the 14th November, 1928. By his will he directed that after the death of his wife a bequest of £2,000 should be invested by his trustees and the income applied towards augmenting the salaries of the ministers officiating at the Zion Chapel of the United Methodists at Batley. The will provided that if the chapel "shall . . . at any time cease to be used for the preaching and teaching the doctrine of the said United Methodists or for any other reason, the said chapel and property shall cease to exist for the said purpose, or the said United Methodists shall become merged in or united with some other religious body, then the said sum of £2,000 shall be held upon trust for such of my nephews and nieces as shall be living at my death in equal shares." The testator's wife died on the 14th December, 1929. On the 20th September, 1932, the United Methodist Church was united with the Wesleyan Methodist Church and the Primitive Methodist Church pursuant to the Methodist Church Union Act, 1929.

MAUGHAM, J., in giving judgment, said that the gift was obviously charitable, and the question was whether it came to an end or subsisted after the Methodist Church was substituted for the United Methodist Church. After referring to *In re Randell*; *Randell* v. *Dixon*, 38 Ch.D. 213; *In re Blunt's Trusts*; *Wigan* v. *Clinch* [1904] 2 Ch. 767; *In re Bowen*; *Lloyd Phillips* v. *Davis* [1893] 2 Ch. 491; *In re Peel's Release* [1921] 2 Ch. 218; his Lordship remarked that in two of those cases the gift was expressly for a limited period, and in the other two expressly in perpetuity, while in the present case neither intention was expressed. This was a gift to effect a particular mode of charity, with no general charitable intention to give ground for the application of the *cy-près* rule. However, under s. 18 of the Act of Union, the trust would continue as being "subsidiary or ancillary" to the purposes of the Methodist Church. That section had enlarged the primary trusts contained in the will. It was impossible to read the proviso as restricting, by implication, the trust in a limited period, the proviso itself being void for perpetuity. The trust would continue as modified by the section.

COUNSEL: *Wilfred Hunt*; *Guest Mathews*; *Winterbotham*; *Vaisey*, K.C., and *J. V. Nesbitt*.

SOLICITORS: *Gibson & Weldon*; *Walker, Rowe & Clark*, for *W. Gledhill*, of Dewsbury; *Jaques & Co.*, for *Hick & Hands*, of Scarborough; *Torr & Co.*, for *Donald G. Ineson*, of Cleckheaton.

[Reported by FRANCIS H. COWPER, Esq., Barrister-at-Law.]

High Court—King's Bench Division.

Bush *v.* **London County Council.**

Acton and Finlay, JJ. 2nd May.

PROCEDURE—ACTION BROUGHT IN COUNTY COURT—FOR DAMAGES FOR INJURY TO PLAINTIFF'S PROPERTY—DEATH OF PLAINTIFF BEFORE HEARING—WHEN ACTION MAINTAINABLE BY EXECUTOR—ADMINISTRATION OF ESTATES ACT, 1925 (15 Geo. 5, c. 23), s. 26 (2).

This was an appeal by the plaintiff from the decision of the judge at Lambeth County Court holding that the action was not maintainable. The case raised the question as to the circumstances in which an action begun in the county court survived so as to be maintainable by an executor. The original plaintiff in the action, Mrs. Clara Bush, claimed £5 18s. from the London County Council for damage done to her property in Vauxhall-street by the destructive acts of the children of the defendants' school in Vauxhall-street, adjoining her premises, owing, she alleged, to the negligence of the defendants, their servants or agents, and alternatively, she claimed that the acts of which she complained amounted to a nuisance. She also claimed an injunction to restrain the continuance or repetition of the alleged acts. In answer to a notice demanding particulars the plaintiff, in reply, stated that the acts complained of took place in August, and between August and November, 1931. The action came before the county court on the 4th March, when it was adjourned. It was again set down for trial on the 17th June, 1932. The plaintiff, Mrs. Bush, however, had died on the 15th June, and her son, Lester Bush, as executor, was substituted as plaintiff under Ord. 17, r. 1, and the hearing of the case took place on the 4th November, 1932. The preliminary question was then

raised whether, in the circumstances, the action was maintainable by the executor. Section 26, sub-s. (2) of the Administration of Estates Act, 1925, provides: "The personal representative of a deceased person may maintain for any injury committed to the real estate of the deceased within six months before his death any action which the deceased could have maintained, but the action must be brought within one year after his death and any damages recovered in the action shall be part of the personal estate of the deceased." The county court judge held that the action was not maintainable and dismissed it. The plaintiff now appealed.

ACTON, J., said that under s. 26 of the Act of 1925, the action was for any injury committed to the estate of the deceased within six months before his death. In the present action the only injury complained of in the particulars was that inflicted between August and November, 1931, which was quite clearly and admittedly well outside the period of six months, and therefore, it was quite clear that the executor was not in a position to maintain the action. It was argued for the plaintiff that this was a continuing cause of action, and that he was not prevented from adducing evidence as to other like alleged acts on the part of the children subsequent to the end of November, 1931. In his (his lordship's) view, however, any claim as to actual damage to the property was limited to a period anterior to the end of November, 1931. There was nothing to indicate at any period in the case that, in fact, there had been any damage subsequent to November, 1931. It was impossible to say that the county court judge was wrong in law in anything that he did, and the appeal would be dismissed, with costs.

FINLAY, J., agreed.

COUNSEL: *Parnell Kerr* for the appellant; *Monier Williams* for the respondents.

SOLICITORS: *Lester Bush; The Solicitor to the London County Council.*

[Reported by CHARLES CLAYTON, Esq., Barrister-at-Law.]

Medlicott *v.* Emery.

Acton and Finlay, JJ. 4th May.

SOLICITOR—LITIGATION—COUNSEL'S FEE—NOT PAID BY LAY CLIENT—PAID BY SOLICITOR—ACTION TO RECOVER FROM LAY CLIENT.

This was an appeal by the defendant, George Frederick Emery, a member of the Bar, from a decision given by Master Ball. The defendant had been a litigant in an action in which he had employed the present plaintiff, Frank Medlicott, as his solicitor. In that action Emery had instructed Medlicott to brief a King's Counsel. That was done. The brief was marked with a fee of fifty guineas, and in the action, which was tried on the 18th July, 1931, judgment was given against Emery. The counsel's clerk sent in the usual list of fees, but on Medlicott applying to Emery for instructions to pay the fee, Emery refused to give such instructions. Medlicott, however, himself paid the fee, taking the view that he was under a moral duty to do so, and that failure to do so would be detrimental to his professional reputation. He then brought an action (out of which the present appeal arose) which, on a summons for judgment, was referred to Master Ball, who gave judgment for the plaintiff, holding that the case was analogous to *Read* v. *Anderson*, 13 Q.B.D. 783. The defendant, who appeared in person, contended that this case was distinguishable from *Read* v. *Anderson*, *supra*, and also that no proper bill of costs had been delivered to him.

ACTON, J., said that the matter, involving as it did an unfortunate dispute between members of the legal profession, to which all of them belonged, was one which had naturally received from him the most careful and anxious consideration. He used those words advisedly, both careful and anxious. So far as findings of fact were concerned, he did not understand that the court was invited to take any different view of them than that the findings of fact of the Master were to be accepted. In spite of the arguments that had been addressed to the court by Mr. Emery himself, he, his lordship, saw no reason for saying that the learned Master was wrong in law in the grounds on which he arrived at the conclusion at which he did arrive, and in his, his lordship's opinion, the appeal should be dismissed accordingly.

FINLAY, J., said that this was a case in which he would content himself in saying that he was of the same opinion.

COUNSEL: The defendant appeared in person; *Russell Vick*, for the respondent.

SOLICITORS: *Medlicott & Co.*, for the respondent.

[Reported by CHARLES CLAYTON, Esq., Barrister-at-Law.]

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Blind Voters Bill.
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Bootle Corporation Bill.
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Dearne District Traction Bill.
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Dewsbury and Ossett Passenger Transport Bill.
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Essex County Council Bill.
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Staffordshire and Worcestershire Canal Bill.
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Torquay and Paignton Tramways (Abandonment) Bill.
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Societies.

The Medico-Legal Society.

NERVOUS SHOCK AS A GROUND OF ACTION.

Lord RIDDELL, the President, took the chair at a meeting of this Society held at 11, Chandos-street on 25th May, and Dr. W. G. Earengey, K.C., read a paper entitled "The Legal Consequences of Shock."

Dr. EARENGEY, after outlining the law relating to remoteness of damage, dealt with the rule that emotional suffering was incapable of assessment in terms of money, and that a plaintiff could only succeed if he could prove either physical impact or emotion coupled with bodily illness or injury. This rule might, he said, have been due to the old practice of forbidding the parties to a suit to give evidence, or to fear on the part of former judges that its relaxation might lead to a large number of fraudulent claims. Nevertheless, the legal attitude towards the mind and its workings had immensely changed during the last few decades as knowledge had grown. In 1860, in the case of *Allsop* v. *Allsop*, 5 H. & N. 534, a husband and wife had failed to get damages for a slander imputing unchastity and causing serious damage to the wife's health. Pollock, C.B., had held that the special damage alleged (this was before the Slander of Women Act) had never been previously relied on and was too remote. Martin, B., had added that special damage must be the natural or necessary result and must not depend on individual peculiarity. The real difficulty had appeared to be not one of assessment, but of legal proof that mental suffering had in fact occurred and was the result of the wrongful act. In an Australian case—*Victorian Railway Commissioners* v. *Coultas and Wife*, 13 A.C. 222—the plaintiffs had been awarded damages for the wife's nervous shock caused by fright at an impending collision and resulting in bodily illness, but the finding had been reversed on appeal to the Judicial Committee, who had refused to consider damage in the absence of physical injury. On the other hand, in *Pugh* v. *L.B.S.C. Railway* [1896] 2 Q.B. 48, a signalman who had been incapacitated by nervous shock caused by the imminent danger of a collision had made good a claim to insurance compensation, the Court of Appeal holding that the fright was an accident within the policy. In *Wilkinson* v. *Downton* [1897] 2 Q.B. 57, the defendant as a practical joke had falsely told a married woman that her husband had broken both his legs in an accident, and she had suffered a violent nervous shock which had made her ill. Wright, J., had held that, as such a statement could scarcely fail to produce grave effects on any but an exceptionally

indifferent person, the damage was not too remote. In *Pulieu* v. *White & Sons* [1901] 2 K.B. 669, a pregnant woman had become seriously ill and had given birth to an idiot child as the result of a shock received when a van had been driven through the front window of the public-house where she was working. The Divisional Court had awarded her damages because the negligent driving had reasonably and naturally caused her a nervous shock by her reasonable apprehension of immediate bodily harm, and her illness had been a natural and direct consequence of the shock. Kennedy, J., had observed that "nervous" (not "mental") was the correct epithet where terror operated through parts of the physical organism to produce bodily illness, and that mental pain unaccompanied by personal injury would not sustain the action, because fear could be proved and measured only by physical effects.

Shock caused by fear for another had been held an actionable injury. Physical injury caused by a sudden action performed out of fear for another had been the subject of damages in *Brandon* v. *Osborne Garrett & Co., Ltd.* [1924] 1 K.B. 548. In *Hambrook* v. *Stokes Bros.* [1925] 1 K.B. 141, a mother had died from shock caused by seeing a runaway lorry run down a steep street past the place where she knew her child had been playing, and by hearing from bystanders that her child had been injured. The Court of Appeal, by a majority, had upheld the husband's claim for damages. Atkin, L.J., had condemned the theory that damage at law could only be based on physical and not mental injury, and had attributed it to a belated psychology which falsely removed mental phenomena from the world of physical phenomena. He saw no reason for excluding from relief the bystander in the highway who received injury from apprehension or the sight of injury to a third party. This view had, however, been criticised by most of the judges of the Court of Session in *Currie* v. *Wardrop* (1927), S.C. 538.

In conclusion, Dr. Earengey said that he could see no logical justification for the distinction between mental and nervous shock. Granted the breach of duty and assuming that injury or shock should have been foreseen, it did not seem to matter which kind of suffering was inflicted. Purely mental suffering might be as great as the combination of mental and physical suffering that had been called "nervous." There was ground for hope that even purely mental suffering, if sufficiently proved, might now be held a sufficient basis for damages, but success would be more assured if medical science could furnish some physical evidence. If the medical profession could assist the law in this respect, lawyers would be the first to acknowledge their gratitude.

A discussion followed.

The Hardwicke Society.

A special meeting of the Society was held in the Middle Temple Common Room on Friday, 26th May. The President, Mr. Vyvyan Adams, M.P., took the chair at 8.15 p.m. In public business Mr. William Latey read a paper to the House on the subject of the Society's history. A discussion ensued in which the following members took part: Mr. Ungoed-Thomas (Vice-President), Mr. Newman Hall (Hon. Treasurer), Mr. Granville Sharp (ex-President), Mr. P. B. Morle (ex-President), Mr. Holford Knight, K.C., M.P., Mr. Constantine Gallop (ex-President) and Mr. Ifor Lloyd (ex-President).

Legal Notes and News.

Honours and Appointments.

The King has been pleased to approve the appointment of Mr. CLIFFORD MONMOHAN AGARWALA, Barrister-at-Law, to be a Puisne Judge of the High Court at Patna with effect from 11th July, in the vacancy caused by the death of Sir Jwala Prasad.

Mr. ERNEST C. KING, Clerk and Solicitor to the Coulsdon and Purley Urban District Council, has been elected President of the Society of Clerks to Urban District Councils. He was admitted a solicitor in 1924.

Mr. A. T. PADLEY, solicitor, has been appointed Clerk to the Market Rasen (Lincs) Urban District Council, in succession to his father, the late Mr. A. A. Padley. Mr. A. T. Padley was admitted a solicitor in 1924.

Mr. F. H. W. BUXTON has been appointed Assistant Solicitor to the Borough of Colchester in succession to Mr. G. Hetherington, now Town Clerk of Bacup.

Professional Announcements.

(2s. per line.)

Mr. HUBERT P. ROBSON, solicitor, of Messrs. Underwood and Robson, Barton House, 2 High-street, Hull, has taken into partnership Mr. ERNEST ROBSON UNDERWOOD, grandson of the late Mr. J. J. Underwood. The partnership will as from the 1st June, 1933, be carried on at Imperial Chambers, Bowlalley-lane, Hull, under the existing style.

THE SOLICITORS' MORTGAGE SOCIETY, LTD. (formed by Solicitors for Solicitors), invites particulars of FUNDS or SECURITIES. Apply, The Secretary, 20, Buckingham-street, Strand, W.C.2. Telephone No. Temple Bar 1777.

Wills and Bequests.

Mr. Albert Howe, solicitor, of Sheffield, left £35,573, with net personalty £33,701.

Mr. Henry Symonds, F.S.A., Barrister-at-Law, of Weston-super-Mare, and of Lincoln's Inn, left estate of the gross value of £122,972, with net personalty £112,986. He left six months' wages to each indoor or outdoor servant of twelve months' service in his service at his decease and not under notice, either given or received.

Mr. Frederick Acton, C.B.E., J.P., solicitor, of Skegness, formerly of Nottingham, left estate of the gross value of £55,397, with net personalty £49,061. He left £10,000 to the Nottingham General Hospital, "my services for many years on the management of which was the joy of my life," for the endowment of free beds in memory of his late wife and himself, suitable tablets to be affixed by the hospital board.

UNEXECUTED TITHE ORDERS.

Judge Clements, at Hythe County Court, on Friday, 19th May, said: "There are so many outstanding tithe orders, which are in themselves warrants to distrain, still unexecuted, that unless and until the tithe owners bring before me some person approved and able and willing to carry out the court's order, I shall refuse to exercise my discretionary power in all cases. I am not prepared now to make orders that will remain ineffectual. To do so brings the court into disrepute."

NEW NORTHERN IRELAND LAW COURTS.

The new Royal Courts of Justice of Northern Ireland were opened on Wednesday, 31st May, in Belfast by the Governor of Northern Ireland (the Duke of Abercorn) in the presence of nearly a thousand people prominent in the public and legal life of the Northern Province, including the Prime Minister (Lord Craigavon), the members of the Northern Cabinet, and Sir John Ross, the last Lord Chancellor of Ireland.

High Court of Justice.

WHITSUN VACATION, 1933.

NOTICE.

There will be no sitting in Court during the Whitsun Vacation.

During the Whitsun Vacation all applications "which may require to be immediately or promptly heard," are to be made to the Honourable Mr. Justice ATKINSON.

The Honourable Mr. Justice ATKINSON will act as Vacation Judge from Saturday, 3rd June, to Monday, 12th June, 1933, both days inclusive. His Lordship will sit in King's Bench Judges' Chambers on Wednesday, 7th June, at half-past 10. On other days within the above period, applications in urgent matters may be made to his Lordship, personally or by post.

When applications are made by post the brief of counsel should be sent to the Judge, by post or rail prepaid, accompanied by office copies of the affidavits in support of the application, and also by a minute, on a separate sheet of paper, signed by Counsel, of the order he may consider the applicant entitled to, and also an envelope, sufficiently stamped, capable of receiving the papers, addressed as follows: "Chancery Official Letter: To the Registrar in Vacation, Chancery Registrars' Chambers, Royal Courts of Justice, London, W.C.2."

The papers sent to the Judge will be returned to the Registrar.

The address of the Vacation Judge can be obtained on application at the Chancery Registrars' Chambers, Room 136, Royal Courts of Justice.

Chancery Registrars' Chambers.
Royal Courts of Justice.

Circuits of the Judges.

NOTICE.—Civil and Criminal Business must be ready to be taken on the first working day, unless another date is given for Civil Business. In such case Civil Business will not be taken before the date given.

The following Judges will remain in Town: The Lord Chief Justice, Branson, J., MacKinnon, J., and Humphreys, J.

SUMMER ASSIZES, 1933.	S. EASTERN.	NORTH WALES.	SOUTH WALES.	WESTERN.
Commission Days.	*Avory, J.* (2) *Horridge, J.* (1)	*Roche, J.*	*Swift, J.*	*Talbot, J.* (2) *Goddard, J.* (1)
Monday May 15	.. ..	.. ..	.. ..	.. ..
Friday ,, 19	.. ..	.. ..	.. ..	.. ..
Saturday ,, 20	HUNTINGDON	.. ..	.. ..	.. ..
Monday ,, 22	.. ..	.. ..	.. ..	.. ..
Tuesday ,, 23	CAMBRIDGE	.. ..	.. ..	.. ..
Wednesday ,, 24	.. ..	NEWTOWN	.. ..	.. ..
Thursday ,, 25	.. ..	.. ..	.. ..	SALISBURY
Saturday ,, 27	BURY ST. EDM'D	DOLGELLY	.. ..	.. ..
Monday ,, 29	.. ..	.. ..	HAVERF'DW'ST	.. ..
Tuesday ,, 30	.. ..	CARNARVON	.. ..	DORCHESTER
Wednesday ,, 31	.. ..	.. ..	LAMPETER	.. ..
Thursday June 1	.. ..	.. ..	.. ..	.. ..
Friday ,, 2	NORWICH ..	.. ..	CARMARTHEN	.. ..
Saturday ,, 3	.. ..	BEAUMARIS	.. ..	.. ..
Monday ,, 5	.. ..	.. ..	.. ..	WELLS ..
Wednesday ,, 7	.. ..	RUTHIN ..	.. ..	.. ..
Thursday ,, 8	.. ..	.. ..	BRECON ..	.. ..
Friday ,, 9	CHELMSFORD	.. ..	.. ..	.. ..
Saturday ,, 10	.. ..	MOLD ..	PRESTEIGN	.. ..
Monday ,, 12	.. ..	.. ..	.. ..	BODMIN ..
Tuesday ,, 13	.. ..	CHESTER (2)	.. ..	.. ..
Saturday ,, 17	HERTFORD	.. ..	.. ..	EXETER (2)
Monday ,, 19	.. ..	.. ..	.. ..	.. ..
Tuesday ,, 20	.. ..	SWANSEA (2)	.. ..	.. ..
Wednesday ,, 21	.. ..	.. ..	.. ..	.. ..
Thursday ,, 22	MAIDSTONE	.. ..	.. ..	.. ..
Saturday ,, 24	.. ..	.. ..	.. ..	BRISTOL (2)
Monday ,, 26	.. ..	.. ..	.. ..	.. ..
Tuesday ,, 27	.. ..	.. ..	.. ..	.. ..
Saturday July 1	.. ..	.. ..	.. ..	WINCHESTER (2)
Monday ,, 3	KINGSTON	.. ..	.. ..	.. ..
Monday ,, 10	.. ..	.. ..	.. ..	.. ..
Wednesday ,, 12	LEWES ..	.. ..	.. ..	.. ..

SUMMER ASSIZES, 1933.	NORTHERN.	OXFORD.	MIDLAND.	N. EASTERN.
Commission Days.	*Macnaghten, J.* (1) *du Parcq, J.* (2)	*Acton, J.* (2) *Lawrence, J.* (1)	*Finlay, J.* (2) (1)	*Hawke, J. Charles, J.*
Monday May 15	.. ..	.. ..	AYLESBURY	.. ..
Friday ,, 19	.. ..	.. ..	BEDFORD ..	.. ..
Saturday ,, 20	.. ..	.. ..	.. ..	.. ..
Monday ,, 22	.. ..	READING ..	.. ..	.. ..
Tuesday ,, 23	.. ..	.. ..	.. ..	.. ..
Wednesday ,, 24	.. ..	.. ..	NORTHAMPTON	.. ..
Thursday ,, 25	.. ..	.. ..	.. ..	.. ..
Saturday ,, 27	APPLEBY ..	OXFORD ..	.. ..	.. ..
Monday ,, 29	.. ..	.. ..	.. ..	.. ..
Tuesday ,, 30	.. ..	.. ..	.. ..	.. ..
Wednesday ,, 31	.. ..	WORCESTER	LEICESTER	.. ..
Thursday June 1	CARLISLE ..	.. ..	.. ..	.. ..
Friday ,, 2	.. ..	.. ..	.. ..	.. ..
Saturday ,, 3	.. ..	.. ..	.. ..	.. ..
Monday ,, 5	.. ..	GLOUCESTER	.. ..	.. ..
Wednesday ,, 7	LANCASTER	.. ..	.. ..	.. ..
Thursday ,, 8	.. ..	.. ..	OAKHAM ..	.. ..
Friday ,, 9	.. ..	.. ..	LINCOLN ..	.. ..
Saturday ,, 10	.. ..	MONMOUTH	.. ..	.. ..
Monday ,, 12	LIVERPOOL	.. ..	.. ..	.. ..
Tuesday ,, 13	(2)	.. ..	.. ..	.. ..
Saturday ,, 17	.. ..	HEREFORD	DERBY ..	.. ..
Monday ,, 19	.. ..	.. ..	.. ..	DURHAM
Tuesday ,, 20	.. ..	.. ..	.. ..	.. ..
Wednesday ,, 21	.. ..	SHREWSBURY	.. ..	.. ..
Thursday ,, 22	.. ..	.. ..	.. ..	.. ..
Saturday ,, 24	.. ..	.. ..	.. ..	.. ..
Monday ,, 26	.. ..	.. ..	.. ..	.. ..
Tuesday ,, 27	.. ..	STAFFORD (2)	NOTTINGHAM	NEWCASTLE
Saturday July 1	.. ..	.. ..	.. ..	.. ..
Monday ,, 3	MANCHESTER	.. ..	.. ..	.. ..
Wednesday ,, 5	(2)	.. ..	.. ..	YORK
Monday ,, 10	.. ..	.. ..	.. ..	.. ..
Tuesday ,, 11	.. ..	.. ..	.. ..	LEEDS
Wednesday ,, 12	.. ..	.. ..	.. ..	.. ..

CHARTERED SURVEYORS' INSTITUTION.

Mr. Percival Fox Tuckett has been elected President of the Chartered Surveyors' Institution, in succession to Mr. C. Gerald Eve, whose year of office has expired.

Stock Exchange Prices of certain Trustee Securities.

Bank Rate (30th June, 1932) 2%. Next London Stock Exchange Settlement Thursday, 15th June, 1933.

	Div. Months.	Middle Price 31 May 1933.	Flat Interest Yield.	†Approximate Yield with redemption
			£ s. d.	£ s. d.
ENGLISH GOVERNMENT SECURITIES				
Consols 4% 1957 or after	FA	108½	3 13 9	3 9 5
Consols 2½%	JAJO	73	3 8 6	—
War Loan 3½% 1952 or after ..	JD	98¾	3 10 10	—
Funding 4% Loan 1960-90	MN	109¼	3 13 3	3 9 4
Victory 4% Loan Av. life 29 years	MS	108¾	3 13 11	3 10 9
Conversion 5% Loan 1944-64 ..	MN	115¼	4 6 4	3 5 6
Conversion 4½% Loan 1940-44 ..	JJ	108¼xd	4 2 11	3 2 6
Conversion 3½% Loan 1961 or after ..	AO	99	3 10 8	—
Conversion 3% Loan 1948-53 ..	MS	98	3 1 3	3 2 8
Conversion 2½% Loan 1944-49 ..	AO	93	2 13 9	3 1 3
Local Loans 3% Stock 1912 or after ..	JAJO	85½	3 10 2	—
Bank Stock	AO	332	3 12 3	—
Guaranteed 2¾% Stock (Irish Land Act) 1933 or after	JJ	76½	3 11 11	—
India 4½% 1950-55	MN	104	4 6 6	4 3 4
India 3½% 1931 or after	JAJO	81	4 6 5	—
India 3% 1948 or after	JAJO	69	4 6 11	—
Sudan 4½% 1939-73	FA	110	4 1 10	2 10 4
Sudan 4% 1974 Red. in part after 1950	MN	108	3 14 1	3 7 6
Transvaal Government 3% Guaranteed 1923-53 Average life 12 years	MN	100	3 0 0	3 0 0
COLONIAL SECURITIES				
*Australia (Commonw'th) 5% 1945-75	JJ	105	4 15 3	4 9 1
*Canada 3½% 1930-50	JJ	99	3 10 8	3 11 7
*Cape of Good Hope 3½% 1929-49 ..	JJ	100	3 10 0	3 10 0
Natal 3% 1929-49	JJ	95	3 3 2	3 8 2
New South Wales 3½% 1930-50 ..	JJ	93	3 15 3	4 1 7
*New South Wales 5% 1945-65 ..	JD	103	4 17 1	4 13 4
*New Zealand 4½% 1948-58	MS	104	4 6 6	4 2 8
*New Zealand 5% 1946	JJ	109	4 11 9	4 1 10
*Queensland 4% 1940-50	AO	98	4 1 8	4 3 4
*South Africa 5% 1945-75	JJ	112	4 9 3	3 14 9
*South Australia 5% 1945-75 ..	JJ	105	4 15 3	4 9 1
*Tasmania 3½% 1920-40	JJ	100	3 10 0	3 10 0
Victoria 3½% 1929-49	AO	93	3 15 3	4 2 0
*W. Australia 4% 1942-62	JJ	99	4 0 10	4 1 2
CORPORATION STOCKS				
Birmingham 3% 1947 or after ..	JJ	85	3 10 7	—
Birmingham 4½% 1948-68	AO	113	3 19 8	3 7 8
*Cardiff 5% 1945-65	MS	110	4 10 11	3 18 9
Croydon 3% 1940-60	AO	93	3 4 6	3 8 0
*Hastings 5% 1947-67	AO	114	4 7 9	3 14 0
Hull 3½% 1925-55	FA	99	3 10 8	3 11 4
Liverpool 3½% Redeemable by agreement with holders or by purchase ..	JAJO	99	3 10 8	—
London County 2½% Consolidated Stock after 1920 at option of Corp.	MJSD	72	3 9 5	—
London County 3% Consolidated Stock after 1920 at option of Corp.	MJSD	85	3 10 7	—
Manchester 3% 1941 or after ..	FA	84	3 11 5	—
Metropolitan Consd. 2½% 1920-49 ..	MJSD	93	2 13 9	3 1 3
Metropolitan Water Board 3% "A" 1963-2003	AO	87	3 9 0	3 10 0
Do. do. 3% "B" 1934-2003 ..	MS	88	3 8 2	3 9 1
Do. do. 3% "E" 1953-73 ..	JJ	94	3 3 10	3 5 5
*Middlesex C.C. 3½% 1927-47 ..	FA	101	3 9 4	—
Do. do. 4½% 1950-70	MN	113	3 19 8	3 9 5
Nottingham 3% Irredeemable ..	MN	85	3 10 7	—
*Stockton 5% 1946-66	JJ	114	4 7 9	3 12 6
ENGLISH RAILWAY PRIOR CHARGES				
Gt. Western Rly. 4% Debenture ..	JJ	103½	3 17 4	—
Gt. Western Rly. 5% Rent Charge ..	FA	114½	4 7 4	—
Gt. Western Rly. 5% Preference ..	MA	80½	6 4 3	—
‡L. & N.E. Rly. 4% Debenture ..	JJ	85½	4 13 7	—
‡L. & N.E. Rly. 4% 1st Guaranteed	FA	68½	5 16 9	—
London Electric 4% Debenture ..	JJ	102½	3 18 1	—
‡L. Mid. & Scot. Rly. 4% Debenture ..	JJ	94½	4 4 8	—
‡L. Mid. & Scot. Rly. 4% Guaranteed	MA	79½	5 0 8	—
Southern Rly. 4% Debenture ..	JJ	103½	3 17 4	—
Southern Rly. 5% Guaranteed ..	MA	109½	4 11 4	—
Southern Rly. 5% Preference ..	MA	87½	5 14 3	—

* Not available to Trustees over par.

† In the case of Stocks at a premium, the yield with redemption has been calculated as at the earliest date; in the case of other stocks, as at the latest date.

‡ These Stocks are no longer available for trustees, either as strict Trustee or Chancery Stocks, no dividend having been paid on the Companies' Ordinary Stocks for the past year.

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